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c 188 Children of Unmarried Parents Act

Ontario

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CHAPTER 188.

The Children of Unmarried Parents Act.

PART I.

PRELIMINARY.

1. In this Act,—

Interpretation

- (a) "Judge" shall mean judge of the county or district court or police magistrate or judge of the juvenile court where such police magistrate or judge of the juvenile court has been designated by the Lieutenant-Governor in Council a judge within the meaning of this Act; "Judge."
- (b) "Provincial Officer" shall mean an officer in the public service designated for that purpose by the Lieutenant-Governor in Council; "Provincial Officer."
- (c) "Regulations" shall mean regulations made under the authority of this Act. 1927, c. 51, s. 2. "Regulations."

Provincial Officer—Duties and Powers.

2.—(1) The Lieutenant-Governor in Council may appoint such officers, clerks and servants and may employ such other assistance as he may deem necessary for the administration and enforcement of this Act, and may designate any of such officers a provincial officer for the purposes of this Act. Appointment of officers, clerks, etc.

(2) Any officer appointed under this section may take and receive such affidavit or statutory declaration as any person desires to make in or concerning any matter arising out of the administration of this Act. 1927, c. 51, s. 3. Officers may take affidavits, etc.

3. The division registrar and the Deputy Registrar-General shall notify the provincial officer of the birth of every child born out of wedlock registered under *The Vital Statistics Act* and every birth registered under the said Act in such a manner as to suggest that the parents are unmarried or unknown, with such particulars as may be directed by the regulations. 1927, c. 51, s. 4. Provincial officer to be notified of registration of all births out of wedlock.
Rev. Stat. c. 78.

Provincial
officer to
make inves-
tigations.

4. It shall be the duty of the provincial officer, by inquiry through children's aid societies and the returns furnished by the division registrar or Deputy Registrar-General, to obtain all information possible with respect to every child born out of wedlock, and the provincial officer shall take such proceedings and do all such things as are permitted or required under this Act as may seem to him advisable in the interest of such child. 1927, c. 51, s. 5.

Restrictions
as to inter-
ference by
provincial
officer.

5. Nothing in this Act contained shall require the provincial officer to interfere with the care and maintenance of any child born out of wedlock,—

Rev. Stat.
c. 189.

(a) where such child has been adopted according to the provisions of *The Adoption Act*; or

(b) where such child is being cared for voluntarily by a person or persons whom the provincial officer deems suitable to have the charge of such child. 1927, c. 51, s. 6.

Unmarried
mother may
apply to
provincial
officer for
advice.

6. The mother of a child born out of wedlock or of a child who is likely to be born out of wedlock may apply to the provincial officer for advice and protection in any matter connected with such child or with the birth of such child, and the provincial officer shall take such action as may seem to him advisable in the interest of such mother and child. 1927, c. 51, s. 7.

Neglected
child.

7. Where the father of a child born out of wedlock cannot be found or where adequate means of support cannot be provided by such father and the mother is dead, or is absent, or through lack of means is unable, or through misconduct is unfit to have the care of such child, the child may, with the consent of the provincial officer be dealt with as a "neglected child" within the meaning of *The Children's Protection Act*, and shall be maintained in accordance with the provisions of that Act. 1927, c. 51, s. 8.

Rev. Stat.
c. 279.

Regulations.

8. The Lieutenant-Governor in Council may make regulations,—

(a) respecting the procedure to be followed upon an application for an order of affiliation;

(b) for fixing the fees, costs, charges and expenses payable on proceedings under this Act and for dispensing with the payment of such fees, costs, charges and expenses where owing to lack of means or any other reason the judge deems such action advisable;

- (c) for the payment of the expenses of the provincial officer in carrying out the provisions of this Act out of such sums as may be appropriated by the Legislature for that purpose;
- (d) for designating a provincial officer, and for the appointment of local and other assistants to the provincial officer, and for authorizing any such assistants to act for and in the place of the provincial officer;
- (e) generally for the better carrying out of the provisions of this Act. 1927, c. 51, s. 9.

PART II.

Affiliation Order.

9. An application to the judge for an affiliation order may be made,— Application to judge.

- (a) by the mother of a child born out of wedlock; or, Who may make application.
- (b) by an unmarried woman pregnant with a child; or,
- (c) by the next friend or guardian of a child born out of wedlock; or
- (d) by any person who has supplied medical attendance or nursing or hospital accommodation to an unmarried woman during pregnancy or confinement; or
- (e) by a person who has the custody of a child born out of wedlock or who has undertaken the care and education of such child or who has supplied such child with necessities; or
- (f) by any person who has incurred the funeral expenses of an unmarried mother who has died in childbirth or in consequence of her pregnancy, or of a child born out of wedlock; or
- (g) by the provincial officer. 1927, c. 51, s. 10.

10. An affiliation order shall not be made under this Act unless the application therefor is made within the lifetime of the father, and Limit of time for application.

- (a) within one year after the birth of the child; or
- (b) within one year after the doing of any act on the part of the putative father which affords evidence of acknowledgment of paternity; or

(c) within one year after the return to Ontario of the putative father, where absent from Ontario at the expiration of the period of one year from the birth of the child;

(d) within one year from making default under any agreement authorized by this Act. 1927, c. 51, s. 11.

Appointment
for hearing.

11. The judge shall, upon application, appoint in writing a time and place at which he will inquire and determine whether the person said to be the father of the child is in fact the father of such child. 1927, c. 51, s. 12.

Service of
appointment.

12.—(1) Notice in writing of the time and place appointed shall be served personally or in such other manner as the judge may direct upon the person said to be the father of the child at least three days before the day so appointed.

Arrest of
alleged father
who may be
required to
give security
or be im-
prisoned.

(2) Where the judge is satisfied that there is good and probable cause for believing that the person said to be the father of the child is the father of the child and that such person, unless he be arrested is about to quit the territorial jurisdiction of the judge with the intention of avoiding service of the notice in writing referred to in subsection 1 or of evading his obligations in respect of the child and its mother, whether before or after an affiliation order has been made, the judge may issue a warrant for the arrest of such person and upon his arrest may require him to give security for such sum and in such manner and upon such condition as the judge shall direct and if such security is not given the judge may order such person to be imprisoned for any period not exceeding three months unless such security is sooner given, or such person has sooner complied with the condition so imposed. 1927, c. 51, s. 13.

Proceedings
in default of
appearance.

13. If at the time and place appointed the person so served fails to appear or show sufficient reason for not attending, the judge, in the absence of such person and upon sufficient evidence being adduced before him, may make such affiliation order or other order as he may deem just. 1927, c. 51, s. 14.

In case of
appearance.

14.—(1) Where the person so served appears in pursuance of such notice, the judge may hear and determine the matter in a summary manner and upon sufficient evidence being adduced before him may make an order declaring the person named therein to be the father of the child and requiring the father to pay to the provincial officer,—

Liability of
father—
extent of.

(a) the reasonable expenses for the maintenance and care, medical or otherwise, of the mother of such child during the three months next preceding the

birth of the child, at the birth, and during such period after the birth as may in the opinion of the judge have been or be necessary in connection with, or as a consequence of the birth of such child, taking into consideration the circumstances of the case;

(b) a sum of money weekly towards the maintenance of the child until the child attains the age of sixteen years, or a lump sum in lieu of such weekly payments which shall form a principal consuming annuity, the income from which shall be equivalent to the order for weekly maintenance by the court, the balance of which, in the event of the death of the child before the age of sixteen years, shall revert to the Province unless otherwise ordered by the court;

(c) the expenses of the burial of the mother in case of her death at or in consequence of her pregnancy, or of the birth of the child;

(d) the expenses of the burial of the child if he dies before the making of the affiliation order.

(2) In estimating the sums payable by the father under this section, the judge shall take into consideration the ability to provide, and the prospective means of such father. 1927, c. 51, s. 15.

Means of father to be considered.

15. The judge may in his discretion upon the same or a like application order that the mother of a child born out of wedlock shall contribute a weekly sum of money towards the maintenance of the child until such child reaches the age of sixteen years. 1927, c. 51, s. 16.

Liability of mother for maintenance of child.

16. The judge shall fix such sums for maintenance as shall enable the child to maintain a reasonable standard of life, and the judge shall be governed in his findings by the consideration of what the child would have enjoyed had he been born to his parents in lawful wedlock. 1927, c. 51, s. 17.

Amount of maintenance—how fixed.

17. The judge may re-open and reconsider any application for affiliation where fraud is shown or upon the discovery of new evidence and also may from time to time vary the affiliation order. 1927, c. 51, s. 18.

Reconsideration where fraud shown or new evidence.
Power to vary.

18.—(1) The judge may require security to be given for such sum and in such manner as he shall direct for the performance of any order made under the provisions of this Act, and where any person fails to give the security required of

Security and imprisonment for failure to give security.

him, the judge may order such person to be imprisoned for any period not exceeding three months unless such security is sooner given.

Forfeiture
of security.
Application
of proceeds.

(2) When any person has failed to perform a condition or comply with an order in respect of which security has been given, under section 12 or this section, the judge may order that such security be forfeited, which order of forfeiture may be enforced under the provisions of section 19, and the provincial officer shall apply the proceeds of such forfeited security in making any payments ordered to be made by the father, or in such other manner as the judge may direct. 1927, c. 51, s. 19.

Enforcement
of orders.

19.—(1) Any order made under the provisions of this Act, may be enforced in the same manner and by the like proceedings, as,—

As summary
convictions.

Rev. Stat.
c. 121.

(a) any order made or fine imposed under the provisions of *The Summary Convictions Act*, save that imprisonment for default in making payment under such order shall only be ordered as hereinafter provided; or

Or division
court judg-
ments.

(b) a judgment of the division court, where the order has been filed with the clerk of a division court, whereupon proceedings by way of execution or judgment summons, *inter alia*, may be used to enforce such order.

Provincial
officer to
apply to
judge to
enforce
payment.

(2) It shall be the duty of the provincial officer to see that payments directed to be made are duly made, and upon default in any such payment, the provincial officer may apply to any judge, who,—

By summons.

(a) may from time to time summon the person in default to explain the default; and

By warrant
to arrest.

(b) may, where service of the summons has been proved and the person summoned does not appear or sufficient reason for his absence is not given, or where it appears that the summons cannot be served, or where an order of imprisonment has been made, issue a warrant for the arrest of such person; and

By imprison-
ment.

(c) may, when a warrant has been issued or where the person in default fails to satisfy the magistrate that such default is due to inability to pay, order such person to be imprisoned for any period not exceeding three months unless the payments in respect of which he is in default are sooner paid.

As in division
court.

(3) Upon such default the provincial officer, where the order has been filed in the division court, may proceed as in the case of a judgment of that court. 1927, c. 51, s. 20.

20. No order of affiliation shall be made upon the evidence of the mother of the child unless her evidence is corroborated by some other material evidence. 1927, c. 51, s. 21.

Evidence.

21. All proceedings under this Act may be heard by the judge in his chambers and not in open court. 1927, c. 51, s. 22.

Proceedings may be heard by judge in chambers.

22. Notice shall be given to the provincial officer in all proceedings instituted under the authority of this Act, and he shall have the right to appear and intervene and be heard in person or by counsel on any such proceedings. 1927, c. 51, s. 23.

Notice to be given to provincial officer.

23. All payments ordered by the judge, shall be paid to the Public Trustee or, in the case of periodical payments, as the judge may direct. 1927, c. 51, s. 24.

Payments—where to be made.

24. The provincial officer shall not be debarred from instituting or continuing proceedings under this Act by the death of the mother. 1927, c. 51, s. 25.

Death of mother not a bar to proceedings.

25.—(1) Where an affiliation order has been made against the father of a child born or likely to be born out of wedlock, such order shall bind the estate of such father after his death and any sums payable thereunder shall be a debt due from and chargeable upon the estate of the father and recoverable at the suit of the provincial officer, but every affiliation order shall, as to any payment falling due before or after the father's death be subject to review as provided in section 17 and no action or other proceeding shall be taken thereon after the death of the father without the leave of the judge, and the judge, before granting such leave shall direct that notice shall be given to the widow and legitimate children of the father and to all other persons interested in the estate.

Affiliation order shall bind estate of father.

(2) Where it appears to the judge that the terms of the affiliation order cannot be carried out without depriving the widow or legitimate children of the father of necessary maintenance, he shall vary the affiliation order to such an extent and in such manner that the widow of the father and his children born in wedlock, if any, shall be duly provided for before the child or children born out of wedlock. 1927, c. 51, s. 26.

Wife and children born in wedlock not to be prejudiced.

26.—(1) Any agreement between the mother and the putative father of a child born or likely to be born out of wedlock and any agreement entered into between such father and any other person relating to any matters coming within the provisions of this Act with regard to the maintenance and support of such mother or child, shall require the approval in writing of the judge, and a copy of every such agreement shall be recorded with the provincial officer.

Agreement between putative father and mother of child as to maintenance of child requires approval in writing of provincial officer.

Agreement
voidable—
under what
circumstances.

(2) Any agreement coming within subsection 1 of this section, entered into without the approval of the judge, shall be voidable at the instance of the provincial officer.

Payments—
how to be
made.

(3) All money payable under any such agreement shall be paid to the Public Trustee, save in the case of periodical payments which shall be made as the judge may direct. 1927, c. 51, s. 27.

Agreement
with pro-
vincial officer
to pay
expenses.

27.—(1) The provincial officer may enter into an agreement with any person, whereby such person agrees to pay such of the expenses set forth in section 14 as, in the opinion of the provincial officer, have been or may be necessary.

Default under
agreement.

(2) Upon default in payment under any such agreement the provincial officer may apply to the judge for an affiliation order, and such agreement when made by the person said to be the father of the child shall be *prima facie* proof of paternity. 1927, c. 51, s. 28.

Power of
judge to dir-
ect payment
of costs.

28. The judge shall have power to direct payment of the costs of any proceedings taken before him under this Act. 1927, c. 51, s. 29.

Appeal.

29. An appeal shall lie from any order under this Act to the Appellate Division by leave of a judge of the Supreme Court. 1927, c. 51, s. 30.
